

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 4/KOL/2024
Assessment Year: 2017-18

Ratan Chakraborty.....*Appellant*
[PAN: ADNPC 1879 R]

Vs.

ITO, Ward 50(5), Kolkata.....*Respondent*

Appearances:

Assessee represented by: Somnath Ghosh, Adv.

Department represented by: Kallol Mistry, JCIT, Sr. DR.

Date of concluding the hearing : May 22nd, 2024

Date of pronouncing the order : July 3rd, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the appellant filed his return of income for AY 2017-18 on 20.03.2018 declaring total income of Rs. 4,85,880/-. The case was selected for scrutiny on the basis of information available with the Assessing Officer (hereinafter referred to as Id. 'AO'), indicating that the assessee had deposited Rs. 4,55,85,360/- in cash in his bank account during the demonetization period. It is seen from the records that Id. AO passed an order u/s 143(3) of the Act on 27.12.2019 determining total income at Rs. 4,60,71,240/- after making an addition of Rs. 4,55,85,360/-, being alleged undisclosed cash deposits treated as unexplained money u/s 69A of the Act. It is further

observed that there was no response to statutory notices sent out by ld. AO and hence, this order was passed more or less in an *ex-parte* manner.

1.1. Before ld. CIT(A) also it appears that opportunities of hearing were not availed off and due to alleged non-persuasion before the First Appellate Authority, appellant's case was dismissed for non-prosecution.

2. Before the ITAT, the appellant has filed an appeal with the following grounds:

“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. failed to appreciate that none of the conditions precedent existed for and/or were fulfilled by the Ld. Income Tax Officer, Ward 50(5), Kolkata for his specious action of assuming jurisdiction to resort to an addition invoking the mischief of s. 69A of the Income Tax Act, 1961 in respect of a return in Form No. 4S filed u/s. 44AD of the Act and the specious assessment order dated 27-12-2019 passed u/s. 143(3) of the Act framed is therefore ab initio void, ultra vires and ex-fade null in law.

2. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. acted unlawfully in upholding the purported addition to the extent of Rs. 4,55,85,360/- made by the Ld. Income Tax Officer, Ward 50(5), Kolkata alleging unexplained monies invoking the provisions of s. 69A of the Income Tax Act, 1961 in the facts and circumstances of the instant case and the specious finding on that issue is absolutely arbitrary, unwarranted, and perverse.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. erred in upholding the purported addition of Rs. 4,55,85,360/- made by the Ld. Income Tax Officer, Ward 50(5), Kolkata on account of alleged unexplained monies being the cash deposits made in Specified Bank Notes during Demonetization Period on extraneous considerations not germane to the issue and totally ignoring the cogent explanation adduced on record and the impugned finding on that issue is completely unfounded, unjustified, and untenable in law.

4. FOR THAT on the facts and in the circumstances of the instant case, the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. was wholly in error in upholding the addition in the sum of Rs. 4,55,85,360/- resorted to by the Ld. Income Tax Officer, Ward 50(5), Kolkata on account of alleged undisclosed monies under the garb of the provisions of s. 69A of the Income Tax Act, 1961 and the specious action on that behalf indulging in speculation, surmise, suspicion, and conjecture is wholly illegal, illegitimate, and infirm in law.”

2.1. Before us Id. Counsel for the assessee has filed a detailed paperbook containing 106 pages, along with a letter from the bank indicating that the appellant has no bank account with Bank of Baroda, Rajarhat, New Town Branch and that they had wrongly mentioned the PAN of the appellant in certain details sent to the Id. AO. It is further mentioned in the said letter that the bank account details sent to the Id. AO were of the partnership firm and not of the appellant. This letter has crucial bearing on the case and hence it is reproduced as under:



BOB/VJRAJA/Misc./60/2022-23

Date: 06.09.2022

To Whom It May Concern

This is to certify that Mr Ratan Chakraborty who was one of the Partner of the Firm Namely "Mira Service Station" and the said Firm had maintained Current Account with our Branch having No. 723000301000220 since 23/05/2008.


We also certify that aforesaid Mr Ratan Chakraborty has no Bank account with our Bank.

We also certify that, we wrongly mentioned PAN No. ADNPC1879R of Mr. Ratan Chakraborty in the aforesaid said Bank Current Account of the Partnership Firm.

The Correct PAN of the Partnership Firm and Mr Ratan Chakraborty are as below:

- 1 PAN of the Partnership Firm "Mira Service Station" : AA0FM7257K
- 2 PAN of the Mr Ratan Chakraborty Partner of the Partnership Firm "Mira Service Station" ADNPC1879R

Regards


Subir Kumar Paul
Joint Manager
Rajarhat Newtown Branch
Bank of Baroda

2.2. Before us it has been averred by the Id. A/R that the impugned addition has arisen due to a mistake committed by the bank whereby bank account details of M/s. Mira Service Station, in which the appellant is a partner, were sent to the Id. AO, who thereafter proceeded to draw an adverse inference on account of cash deposits representing the impugned addition. In the paperbook, the Id. A/R has filed copies of Audit reports and account statements of M/s. Mira Service Station, along with partnership deed and copy of return filed by the said partnership firm. Admittedly, these documents were never submitted before either Id. AO or Id. CIT(A) in the case of the appellant.

3. Ld. D/R averred that since these documents were not before Id. AO, he should be given a chance to verify the same.

4. The documents filed before us, especially the letter from the bank (*supra*) have been carefully perused. On the basis of said documents it is evident that the impugned addition has been made on the basis of cash deposits in the bank account of the partnership firm in which the appellant is a partner. It has also been informed that M/s. Mira Service Station used to be a proprietary concern, with the appellant as the proprietor in years before the present assessment year. While it is clear that, *prima facie*, the addition has been made on the basis of an error committed by the bank it would be just and proper to direct the Id. AO as under:

- i) To verify whether the bank account from which adverse inferences have been drawn actually belong to the partnership firm and not to the assessee.
- ii) The genuineness of the letter dated 06.09.2022 issued by Bank of Baroda (*supra*).

4.1. In case the genuineness of documents as per (i) & (ii) mentioned above are verified then the impugned addition would stand deleted. Accordingly, Id. AO needs to verify the same as directed and grant relief on the entire amount of addition after such verification.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 3rd July, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 03.07.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Ratan Chakraborty, C/o- S.N. Ghosh & Associates, Advocates, 2, Garstin Place, 2nd Floor, Suite No. 203, Off Hare Street, Kolkata, West Bengal, 700001.**
- 2. ITO, Ward 50(5), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata